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NO.87-504

In the Supreme Court of the United States

OCTOBER TERM, 1987

CURTIS MICHAEL RICHENDOLLAR
Petitioner

V.

DIAMOND M DRILLING COMPANY, INC.
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING OF THIS COURT'S ORDER DENYING APPELLANT'S PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION AS REQUIRED BY SUPREME COURT RULE 51.2

Counsel hereby certifies that this Petition for Rehearing is limited to substantial grounds not previously presented and is presented in good faith and not for delay of these proceedings.

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MICHAEL J. SAMANIE

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GROUNDS FOR REHEARING

Since this Court's denial of appellant's Petition for Writ of Certiorari on November 9, 1987, a case decided by the United States Court of Appeals, Fourth Circuit, has come to the attention of the undersigned counsel which indicates a conflict with that circuit and the United States Court of Appeals, First and Fifth Circuits, on the issue of whether or not 33 U.S.C. § 905(b) creates its own cause of action against a vessel.

As set forth in appellant's Petition for Writ of Certiorari, both the First and Fifth Circuits of the United States Court of Appeals have held that 33 U.S.C. § 905(b) does not create a cause of action but, rather, merely preserves previous negligence remedies provided by maritime law. Based upon that foundation, those appellate circuit courts held that 33 U.S.C. § 905(b) was limited to maritime torts.

However, in the case of *Garvin v. Alumax of South Carolina, Inc.*, 787 F.2d 910 (4th Cir. 1986) the United States Court of Appeals, Fourth Circuit, stated on page 917 of its decision:

> . . .The federal statute **[33 U.S.C. § 901 et seq]** lays down some procedural rules, but it does not create any cause of action against a third party, **except with respect to claims against vessels,** or to define circumstances affecting the right of the insured claimant to prevail in any action that may be brought against a third party. [Emphasis added]

Although admittedly dictim, that statement is the only evidence which this writer can find setting fourth the mind of the Fourth Circuit on the present issue. Moreover, the

statement contained in *Garvin* is consistent with this Court's decision in *Scindia Steam Navigation Co., Ltd. v. De Los Santos*, 101 S.Ct. 1651, 1621, 451 U.S. 156, 68 L.Ed.2d (1981) which stated that Section 905(b) provides a "statutory negligence action against the vessel".

The outcome of this case rests on whether or not 33 U.S.C. § 905(b) provides an independent cause of action for vessel negligence notwithstanding the absence of maritime jurisdiction. Apparently, that issue would be decided differently in the United States Court of Appeals, Fourth Circuit, than in the United States Court of Appeals, First and Fifth Circuits.

For the foregoing reasons, appellant requests this Court to reconsider its denial of his Petition for Writ of Certiorari in light of the apparent conflict that exists between the United States Court of Appeals, Fourth Circuit, and the United States Court of Appeals, First and Fifth Circuits.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition for Rehearing has been served upon counsel for Diamond M. Drilling Company, Inc., Joseph J. Weigand, Jr., Post Office Box 6062, Houma, Louisiana 70361, properly addressed and postage prepaid on this 3rd day of December, 1987.

MICHAEL J. SAMANIE